

HOUSE....No. 162.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, February 3, 1857.

Ordered, That a Special Committee of Five be appointed to consider and report whether any, and what changes are expedient in the laws of this Commonwealth, relating to interest of money.

February 5, 1857.

The Chair appointed

Messrs. RUSSELL, of Boston,
FARMER, of Roxbury,
DANIELS, of New Braintree,
KIMBALL, of Newburyport, and
CLAPP, of Southampton.

WILLIAM STOWE, *Clerk.*

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, April 18, 1857.

The Special Committee, appointed February 5th, to consider and report whether any, and what changes are expedient in the laws of this Commonwealth relating to interest, have considered the same, and

R E P O R T:

“Money,” Aristotle said, “is naturally barren.” It produces nothing specifically,—and to the ancient mind it seemed to follow, that therefore no remuneration could be justly claimed or received for its use. This consideration, with others to be hereafter noticed, contributed to form a public opinion, which, till within a few centuries, prohibited by law, the taking of *any* compensation for the use of money loaned. The civilization of modern times has totally reversed this policy; and while usury, in the sense the word originally bore, or interest as we now term it, is universally allowed to be taken in civilized nations, yet, there lingers in the provisions of law, some notable relics of the opinion that once prohibited, as pernicious and sinful, the receipt of any remuneration for the use of money loaned.

“In England, as in most other countries, Christians were, after the conquest, absolutely prohibited, both by the civil and

the ecclesiastical law, from bargaining for interest. But as Jews, according to the Mosaic law, were allowed to lend at interest to a stranger, its exaction by them was first connived at, and subsequently authorized by law. And the same privilege was afterwards extended to the Italian or Lombard merchants. In consequence of this exemption, many Jews early settled in England, and engrossed a large share of the trade of the kingdom. But despite their industry and general good conduct, the prejudices against them and against the business in which they were mostly engaged, were so very strong that they and their families were regarded as slaves of the crown, by whom they were plundered, to an extent and under pretences which would now appear incredible. To such an extreme, indeed, were these oppressive practices carried, that a particular office, called the *exchequer of the Jews*, was established, for receiving the sums extorted from them in fines, customs, tallages, forfeitures, etc. They were, in consequence, obliged to charge an enormous rate of interest, or, as Madox expresses it, ‘to fleece the subjects of the realm as the king fleeced them.’ And hence, while only from 7 to 10 and 12 per cent. interest was paid in countries where sounder principles prevailed, the rate charged in England was three, four, and even five times as great.”*

“But in the end the disorders occasioned by this ruinous system became so obvious, that, notwithstanding the deeply rooted prejudices to the contrary, a statute was passed in 1546, (37 Hen. VIII., cap. 7,) legalizing interest to the extent of 10 per cent. per annum; because, as is recited in the words of the act, the statutes ‘prohibiting interest altogether have so little force, that little or no punishment hath ensued to the offenders.’ In

* “At Verona, in 1228, the interest of money was fixed by law at 12½ per cent. Towards the end of the fourteenth century, the republic of Genoa paid only from 7 to 10 per cent. to her creditors; and the average discount on good bills at Barcelona, in 1435, is stated to have been about 10 per cent. But whilst interest in Italy and Catalonia, where a considerable degree of freedom was allowed to the parties bargaining for a loan, was thus comparatively moderate, it was, despite its total prohibition, incomparably higher in France and England. Matthew Paris mentions that, in the reign of Henry III., the debtor paid 10 per cent. every two months. And this, though impossible as a general practice, may not have been very far from the average interest charged on the few loans that were then contracted for.”—*Hallam's Middle Ages*, Vol. iii., p. 402.

the reign of Edward VI., the horror against interest seems to have revived in full force; for, in 1552, the taking of any was again prohibited, 'as a vice most odious and detestable,' and 'contrary to the word of God.' But in spite of this denunciation, the rate of interest, instead of being reduced, immediately rose to 14 per cent., and continued at this rate until, in 1571, an act was passed (13 Eliz., cap. 8,) repealing the act of Edward VI., and reviving the act of Henry VIII., allowing 10 per cent. interest. In the preamble to this act, it is stated, 'That the prohibiting act of King Edward VI. had not done so much good as was hoped for; but that rather the vice of usury [i. e. taking any interest,] hath much more exceedingly abounded, to the utter undoing of many gentlemen, merchants, occupiers, and others, and to the importable hurt of the Commonwealth.' This salutary statute was opposed, even by those who should have known better, with all the violence of superstitious fanaticism. Dr. John Wilson, a man famous in his day, and celebrated for the extent of his learning, informed the House of Commons, of which he was a member, that 'it was not the amount of the interest taken that constituted the crime; but that all lending for any gain, be it ever so little, was wickedness before God and man, and a damnable deed in itself, and that there was no mean in this vice any more than in murder or theft.' To quiet the consciences of the bishops, a clause was inserted, declaring usury [i. e. interest] to be forbidden by the law of God, and to be in its nature sin, and detestable. This statute was limited to a period of five years; but, 'forasmuch as it was, by proof and experience, found to be very necessary and profitable for the Commonwealth of this realm,' it was in the same reign, made perpetual, (39th Eliz., cap. 18."*)

It is hardly necessary to say, that in the preceding extract, the word usury means, not as in our time, the excess of interest above the legal rate, but the taking of any interest whatever. It seems incredible, in this age of the world, that such opinions were ever held, so entirely has public sentiment on the subject changed. The opinion largely had its origin, doubtless, in a misinterpretation or misapplication of the divine laws given to the Jews.

In the following passages, we are to understand that the word usury means what we now call interest:—

“Lev. xxv. 35. And if thy brother be waxen poor, and fallen in decay with thee; then thou shalt relieve him: yea, though he be a stranger, or a sojourner; that he may live with thee.

36. Take thou no usury of him or increase; but fear thy God; that thy brother may live with thee.

37. Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase.

Deut. xxiii. 19. Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of any thing that is lent upon usury.

20. Unto a stranger thou mayest lend upon usury; but unto thy brother thou shalt not lend upon usury.

Neh. v. 7. Then I consulted with myself, and I rebuked the nobles, and the rulers, and said unto them, ye exact usury, every one of his brother. And I set a great assembly against them.

10. I likewise, and my brethren and my servants, might exact of them money and corn; I pray you, let us leave off this usury.”*

This prohibition extended not only to money, but to other things,—to “any thing that is lent upon usury.” Taking along with us the fact, that the word usury in the above passages, means any interest or rent at all, we notice that all remuneration for the use of such things loaned, is prohibited. The Jews, in the divine economy, occupied a peculiar position; and for reasons of the highest wisdom, were intended by all the laws and regulations imposed on them, to be kept distinct and separate from the rest of mankind; and we might as soon claim to be universal, the provisions of Jewish law as to the year of Jubilee, and non-intercourse with the Gentiles, as the above provisions. It is to be observed, that money is placed on no different ground from other articles.

* Further reference to this subject will be found: Ex. xxii. 25; Ps. xv. 5; Jer. xv. 10; Ezek. xviii. 8, xvii. 13, and ch. xxii. 12. See Math. xxv. 28; Luke xix. 23; Prov. xxviii. 8; Isa. xxiv. 2.

This was one of those numerous provisions, intended to effect the separation of the Jews from the other nations, and to unite them in a strong brotherhood, or nationality, for the grand purposes revealed in the scriptures. This is evident from the permission, (Deut. xxiii. 20,) “unto a stranger thou mayest lend upon usury”—(i. e. interest.)

If the intention was, to prohibit any interest or rent, of course, no such exception could have been made; for the exception covered all the world but the small country of Palestine, and the few Jewish brethren people elsewhere.

It is quite unnecessary to inquire into the reason or extent of this prohibition, as it is abundantly evident, that it did not extend to mankind in general, but was limited in its operation, both in place and time. It would be quite difficult to convince the world, that the owners of capital, ought to receive no compensation for its use. Indeed, if we turn to the teachings of the New Testament, it would seem to have become a duty to employ capital, certainly of others intrusted to us. (Matthew, xxv. 28.) “Thou oughtest, therefore, to have put my money to the exchangers, and then at my coming I should have received mine own with usury,” (i. e., interest.) It certainly would have been a good plea, if the slothful servant could have made it appear that the Scriptures forbade usury (interest) to be taken for money.

Without pursuing this branch of the subject, all will agree with the commentator, who says: “It seems as lawful for me to receive interest for money which another takes pains with, improves, but runs the hazard of in trade, as it is to receive rent for my land, which another takes pains with, improves, but runs the hazard of in husbandry.”

How slowly, the opinion against taking any interest at all by law, yielded, is evident in the history of the legislation of the British Empire upon this subject, which has already been referred to. The opinion would have yielded, doubtless, much sooner, had there been more occasion for it, or more notice drawn to the subject. Among the shepherds of Palestine, as among the rude agriculturists of England, prior to the sixteenth century, there was little circulating capital,—little accumulated property. Land was the chief property interest, and almost the only one of importance. But with the creation of modern commerce, manufactures, and the minute division of labor, originating

and supporting modern civilization, a new era dawned upon the world, and new necessities arose.

The law adapted itself by necessity to the times. It allowed interest, but limited the rate,—doubtless, at about the amount capital was then worth. McCulloch quotes an observation of Adam Smith, to the effect, “that the statutory regulations, reducing interest in England, were made with great propriety. Instead of preceding, they followed the fall which was gradually taking place in the market rate of interest.” It fixed the rate at about the current value, but, as a compromise with former notions, it fixed a limit beyond which interest should not be taken. So that, to some extent, the limit upon the rates of interest, is a relic of the old opinion against any interest at all. This will hardly be admitted by most of those who contend for its maintenance. They place it upon other grounds, to be by and by considered.

Lord Bacon said, “to speak of the abolishing of usury, (i. e. interest) is idle; all States have ever had it in one kind or rate or other; so as that opinion must be sent to Utopia.” He then recommends the introduction of “two several sorts of usury, (interest) a less and a greater; for if you reduce usury (interest) to one low rate, it will ease the common borrower, but the merchant will be to seek for money; and it is to be noted, that the trade of merchandise being the most lucrative, may bear usury (interest) at a good rate; other contracts not so.”

He concludes thus: “If it be objected that this doth in a sort authorize usury, (interest,) which before was in some places but permissive; the answer is, that it is better to mitigate usury (interest) by declaration, than to suffer it to rage by connivance.” Seeming to concede, that it were better if all usury (interest) could be prevented. “I say this only,” he says, “that usury (interest) is a *‘concessum propter duritiem cordis;’* for since there must be borrowing and lending, and men are so hard of heart as they will not lend freely, usury (interest) must be permitted.”

When we perceive such an intellect as Lord Bacon possessed, with only such ideas of capital, and its relations to production,—its indispensable service and value to labor, and the progress of the world, we can not look far into antiquity for light upon the laws to be established and maintained upon this subject.

Before passing from this branch of the subject, as there are those who regard the Divine law as aimed against the taking of usury in its modern signification,—that is, of excess above rates allowed by law,—this question may be asked. If the Divine law permits interest to be taken at all, what rate does it permit or allow? By the law of England, interest has been at different periods, 10, 8 and 5 per cent., and now any rate on some kind of contracts, and 5 on others; in Massachusetts, 6 per cent.; in New York, 7; in some States of the Union, 6; in some, 8; in some, 6 on some contracts, 10 on others, 12 on others; in Holland and California, unless recently changed, any rate the parties agree on. Which is the Divinely allowed rate? Is it the rate of the residence of the parties? of the lender? of the borrower? or of the place where the contract is made, or is payable? It is perfectly obvious, that if there is a right or moral in the matter, then there is not one moral law for Boston, and another for New York; one for this country, and another for Holland; one for this century and another for the last. If it is said that the Divine law permits the rate which the law of the State allows, then it is obvious that whenever the State allows any rate and every rate to be legal, the Divine law does the same, and therefore, does not help the solution of the question at all. The truth is, the rate of interest is no more a moral question, than the price of coals, or wheat, or land. The rate of interest, like all other questions of value, is indifferent, in a moral point of view; and a bargain in relation to the usufruct of capital, is subject to the same rules that regulate all dealings among men.

The Divine law, both in letter and spirit, prohibits hard and unconscionable bargains, but no more hard bargains as to money, than hard bargains as to wheat or land. And a law can no more be directed against one than the other, from the basis of the Divine law.

The value of capital, as a thing to be loaned or rented, rests upon the same great rule that lies at the basis of all prices,—the law of demand and supply. These are determined by the amount of capital that can be profitably employed at any given time and place, as compared with the supply at that time and place. All the capital that can be employed safely and profitably, at a given time and place, if there be labor to employ it, will be demanded; and if the supply is equal to the demand,

at moderate rates; if the demand is excessive, and the supply limited, rates will advance till they reduce the profits below the paying point, when business will contract, or cease till the lessening demand reaches a point of equality with the supply. And so, as in all business, there is a constant oscillation, like that of the pendulum, and a constant counteracting tendency towards the middle point of rest or equilibrium.

It would follow, if this be so, that the rate of interest, or the value of capital, is in no proper way affected by legislative enactments, but is naturally regulated by the laws of value and trade. That this may appear plain, it is necessary to obtain a clear view of that which is loaned and borrowed, upon those contracts usually bearing interest.

Man was originally placed in a world void of products of labor, but instinct with capacities. His mission was to till it. In nature, was concealed a vast productive energy; in man, a wisdom to guide, and a physical power to educe. His necessities compelled, to some extent, the exercise of these powers. It is the discovery of civilization, that the powers of nature and man combined to produce, are greater than the necessary consumption; and that saved products increase the facility and power of producing.

Like the work of the builders of the pyramids, every layer added, forms a new basis for a higher step. A product gained, itself produces. The prime wants or necessities of man, are food and shelter. These supplied, the way is open to the higher attainments his nature is capable of; such as the attaining of comfort, of knowledge, the cultivation of his higher powers, and the gratification of his nobler and finer aspirations in the pursuits of science, art and letters, in all their varied departments.

The barbarian is content, when production and consumption are equal, or about equal. With his hut, canoe, a few rude implements of the chase or war, and his mere physical wants supplied, he is content. With him, money is not called into requisition. There is no function for it to perform in his economy. The civilized man differs totally. He accumulates and transmits; whatever is produced above consumption is saved, and makes up the wealth, or capital of civilized life. The first man began the world with his hands only to aid him; the first

saved products, doubtless, were rude implements of culture. With the aid of these, his power of producing was increased many fold. The wild land, reduced in its ruggedness, and subjected to the process of cultivation, is increased in its power of producing; with the same labor, there is more product. The amount which this land will now produce, above what it would originally, and with the same labor, marks its increased value,—or the capital saved in this land. One laborer has occupied his time in cutting, shaping and adapting the materials about him, to the purposes of shelter; and his capital is a house; another to the purposes of commerce, and his capital is a ship; another has dammed the waters of a stream, and erected a mill, and gained an assistant laborer, equal to many hands, as his capital. It is obvious, that the implements made and saved,—the cultivated land,—the houses,—the ships,—the mills,—are all products, capable of producing, or greatly multiplying and facilitating production, and greatly increasing protection against the danger of wanting the necessities of life. Thus they aid in disenthraling man from slavery to his mere physical wants, and leave him free to pursue, and able to reach higher points, either in physical comfort, ease, luxury, or intellectual attainment—free to seek the gratification of his mere desire of knowledge, or to engage in fresh searches in the field of science for new agents and servants of man.

These products, then, have a positive value; and this process of accumulation has been going on since the dawn of civilization. Living in this late period of the world's history, we cannot realize the amount of all these products now in existence, and constituting the vast and inconceivable wealth of the world. All these things are capable of aiding in new productions, of supplying the wants, alleviating the ills, and rendering agreeable and pleasant the life of man. They are cultivated lands, food, houses, ships, articles of necessity, convenience or luxury, books, works of art, and in fine, all the numberless products of the industry and genius of the race.

Inseparably connected with the progress of civilization, is the principle of division of labor. If each person were compelled to supply by his own efforts, food and shelter for himself and those dependant on him, few could do much more, and many could not do that. But, while each chooses that form of pro-

duction which is most agreeable, from taste and ability, all are better off, and each is better able to reach such degrees of skill, as otherwise, few or none could.

It is out of this division of labor, that arises that constant exchange of products which, renders that division possible. The artisan, who makes the implements of agriculture, must be supplied with food and shelter, while so engaged. He must exchange his products for food, for fuel, for clothes, for medicines, for books, for a dwelling to live in, and for the supply of his other wants. The agriculturist, with a superabundance of food, lacks all the other things. He must also institute a series of exchanges. The man who has acquired skill in the healing art, has only that skill, to exchange for the necessities of life.

“When” says Adam Smith, “the division of labor has been once thoroughly established, it is but a very small part of man’s wants which the produce of his own labor can supply. He supplies far the greater part of them by exchanging that surplus part of the produce which is over and above his own consumption, for such parts of the produce of other men’s labor as he has occasion for. But when the division of labor first began to take place, this power of exchanging must frequently have been very much clogged and embarrassed in its operations.”

The man who had only skill in the cure of disease, might wait long to find the agriculturist who would require to exchange food for that skill, and the artisan might not be able to command that skill, who had only an agricultural implement to offer in return. No exchange could be effected between them. Now it is obvious, that if there were some article, for which all extra productions could be exchanged, the system of division of labor would be perfected. The need of such an article produced it. It is money. Just as the need of transportation of merchandise and men, called into being, first, the rude wagon,—perfected in the rail-car; the rude canoe,—perfected in the steamship; so another need called into being money,—as a convenience, and to serve a purpose in the economy of life. He who digs up the gold to make a dollar of, is engaged precisely as he is who digs up the iron ore to make a plough. The artisan exchanges his products for money, because he can exchange the money with

the agriculturist, for food. The agriculturist is willing to exchange his products for money, because he can exchange money, for services of skill, or whatever other products he desires.

It is evident, then, that money enjoys this privilege, or is able to perform this function, by reason of the general agreement of society that it shall so do. As soon as this agreement is withdrawn,—as soon as one producer and another should refuse to receive it,—it fails to serve this purpose. This has been often illustrated by bank notes, or government scrip,—not money, it is true, but sometimes attempted by law to be made money. The instance of the Continental currency is familiar. As soon as the people refused it, it depreciated in value, so that a breakfast cost a fabulous amount, in that kind of payment. But such paper promises are not, and were not, money. Money, in order to sustain this confidence of the community,—in order to have ever attained it, must be something of intrinsic value ; and being such, has itself never lost the confidence of the public.

“ Money is not desired as an object of food, of household use, or of personal covering, but for the purpose of resale, as it were, and reëxchange for some object of utility, after having been originally received in exchange for one such already. Money is, therefore, not an object of consumption ; it passes through the hands without sensible diminution or injury ; and may perform its office equally well, whether its material be gold or silver, leather or paper. Yet to enable it to execute its functions, it must of necessity be possessed of inherent and positive value ; for no man will be content to resign an object possessed of value, in exchange for another of less value, or of none at all.” *

Any object, having an inherent and positive value, society might have agreed on to perform the function of money. But some objects would be exceedingly inconvenient. An amount of leather, or iron, equal in value to the labor of a man for a month, would be quite inconvenient to carry about, and more so of larger values.

Some object, then, of greater scarcity, would evidently be

* Say, Pol. Econ., 221.

better for the purpose. This was found in the precious metals, ages ago. Gold and silver,—valuable for many purposes,—highly valued as ornaments, were so scarce, that the labor of a person for a year, produced, on the average, but a small amount. They are extremely ductile, capable of division and subdivision, not diminished in use, nor perishable in the keeping, and therefore, universally adopted to perform the function of money. The idea that they are made money, in the sense that their value is given to them by government, is an error; as is clearly evinced by the depreciation in their value which has taken place, gradually, as they have become more abundant, and suddenly, on the occasion of the discovery of the American mines. The average result of a man's labor, for a year, in mining gold, will, as a general rule, exchange for the average result of a man's labor for the same period in any other branch of industry. Gold has no more an absolute value than any other commodity,—nor so much so as a bushel of wheat,—and hence we obtain the value of gold itself, in different periods of history, by ascertaining how many bushels of wheat a given quantity of gold exchanged for in each period.

It is evident, from these considerations, that money,—that is, gold and silver,—is itself a product, and not an arbitrary creature of law; that a gold eagle is as truly the product of labor, as ten bushels of wheat, or as a plough. The value of wheat is for food, the plough facilitates, lightens and expedites labor,—and so money, by lubricating the machinery of exchanges, expedites, lessens and facilitates labor. All are parts and portions of the complicated machinery of civilized nations, by means of which, life is supported, and man's condition improved. A ten dollar gold piece is a product,—is ten dollars' worth of labor, saved in a form useful to society,—and will exchange for ten dollars' worth of labor or value, in any other form the owner chooses. The high esteem of gold as money, or of money as such, is founded on its readily exchangeable character.

It may be well to say, at this point, that the other relations of money are unessential in this discussion. Money measures value, in a sense; but this is only another of its functions in facilitating exchanges. Bank bills, sometimes popularly called money, are not so, any more than promissory notes, or bills of exchange, although they make a part of the currency of a

country, and may be made, by uses of trade, to do the office of money, to some extent.

The amount of money required for the purposes of its creation, is insignificant, when compared with the work it does. The miner gives his dollar for a bushel of wheat; the agriculturist exchanges it for a plough; the artisan for fuel, and this recipient for medical skill; and the physician for food—and so it continues in a perpetual round, the same dollar constantly repeating its offices. Like a little wagon, it brings a load of grain to the miner, and then a plough to its agricultural owner, and now fuel to its next owner, and so on and on. Thus one dollar serves a multitude of times.

The whole value of the wealth of Massachusetts, is about six hundred millions of dollars. The whole amount of specie in all the banks, by returns for 1856, was \$4,555,571.41. If we suppose as much more in the hands of the public, which is a liberal supposition, then the specie in this Commonwealth, (always excluding the amount locked up in the United States sub-treasury,) is less than ten millions of dollars. Less than one dollar of sixty, of the accumulated property of Massachusetts, is money. The value of the *annual* production of the Commonwealth for the year ending June 1, 1855, as shown by the abstract of the Secretary of State, was \$295,820,621.79. The whole specie in use in the Commonwealth, is therefore equal to about one-thirtieth of the value of her annual products, or in other words, the capital and industry of Massachusetts combined, attain products on the average, every two weeks, more than equal in value to all the gold and silver within her borders.

We can form but an imperfect idea of the multitude of exchanges, borrowings, lendings, buyings, sellings, and of the numberless debts, created and paid, generally bearing interest, and all payable in money, involved in so great an annual production, and in the turning over and over of this vast sum in its production, partial consumption, and large addition to already accumulated wealth.

At the date of the last annual returns, there was due the banks of Massachusetts, the sum of \$101,132,792.15, exclusive of \$30,373,447.36 in savings banks. Add to this, all the other debts bearing interest, and held by the business men of the State; and then add all other debts due on mortgage or

otherwise, to persons who hold them as investments, and there would be an aggregate amount of some hundreds of millions. *Ten times* all the money in the State, would be required to pay the indebtedness held by banks alone, if retained by them as paid in. Probably forty times all the money in the Commonwealth, would be required to pay all the debts in it. It follows, that all these debts could not have been created by, and be now running, on money consideration. The vast bulk of them are evidently on considerations other than money,—and the interest on them, is *not* interest on money.

It is obvious, on a moment's reflection, that when one borrows a thousand dollars in gold, the money is not the ulterior object, or the real object sought. Who would borrow such sum, and pay sixty dollars per annum for it, and lock it up in his safe. The money would be no more at the end than at the beginning of the year. The only use of money is to exchange it for some other thing. Take a common case of borrowing, as an illustration. An agriculturist has his capital invested in grazing lands; but the land alone yields him nothing; therefore, in the spring, he borrows at the bank one thousand dollars. This, he at once exchanges for cattle, and turns them upon his grazing lands. In the fall, he exchanges the cattle for gold, at advanced prices,—pays the bank the amount borrowed, and interest, and retains the surplus as the profit or recompense for his labor, and the use of the land. It is apparent, that the thing desired to be borrowed and *really* borrowed, stripped of the mere form and machinery of the borrowing, was the cattle. A part of the capital of the bank, the cattle, (in form, gold) is united with the capital of the borrower, in land, and the labor of the borrower is added. The result of the combination is a new product,—the increased value; and this new product should be equitably divided between all the contributors to its formation, to wit; the capital of the bank, the capital of the borrower, and the labor of the borrower. In this transaction, the money has served exactly such a purpose as the freight wagon. It was not the thing ultimately wanted,—was not worth a pin for use or profit, except it was exchanged into something else at once;—it was the vehicle that brought to the borrower the thing wanted, and its office was performed in a day or an hour. This illustration is a type of all lending and

borrowing. The merchant borrows goods, (in the money he at once exchanges for them,) to sell at a profit,—the mechanic, in the same manner, materials, to work into products. The farmer, who buys a farm, which he has not the money to pay for, and so mortgages to secure the purchase money, borrows not money in reality, but borrows a farm, or so much of it as he does not pay for.

“When one person lends to another, as well as when he pays wages or rent to another, what he transfers is not the mere money, but a right to a certain value of the produce of the country, to be selected at pleasure; the lender having first bought this right, by giving for it a portion of his capital. What he really lends is so much capital; the money is the mere instrument of transfer. But the capital usually passes from the lender to the receiver through the means either of money, or an order to receive money; and at any rate it is in money that the capital is computed and estimated. Hence, borrowing capital is universally called borrowing money; the loan market is called the money market; those who have their capital disposable for investment on loan, are called the moneyed class; and the equivalent given for the use of capital, or, in other words, interest, is not only called the interest of money, but, by a grosser perversion of terms, the value of money.”*

“The interest of capital lent, improperly called the interest of money, was formerly denominated usury, that is to say, rent for its use and enjoyment; which indeed was the correct term.”†

“Capital, at the moment of lending, commonly assumes the form of money; whence, it has been inferred, that abundance of money is the same thing as abundance of capital; and consequently, that abundance of money is what lowers the rate of interest. Hence the erroneous expressions used by men of business, when they tell us that money is scarce, or money is plentiful; which, it must be confessed, are equally just and appropriate, as the very incorrect term, interest of money.”‡

“And here we must again remark, that the true subject of credit,—that which is lent, and for which interest is paid,—is

*Mills' Pol. Econ., Vol. ii. p. 9.

†Say, Pol. Econ., p. 343.

‡ Say, Pol. Econ., p. 352.

not money, but merchandise, or some one of the myriad forms of material wealth.” * * *

What the merchant or other needy person actually borrows, is not the little slip of paper, called a check, that he carries to the bank; nor yet the bank bills which he receives in payment of the check; nor even the gold and silver coin, which, if he chooses, he can obtain for the bank notes. * * *

He no more thinks of keeping the bank notes or coin on hand, than of retaining the check in his possession. What he really keeps for the six months or year, and therefore, what he really borrows and pays interest for, is the goods which he purchases with the bank bills.”*

It need hardly be added, that a multitude of loans bearing interest are made, where capital is specifically loaned, no money passing or being implied.

The correctness of the propositions of the political economist, that the abundance of money is not abundance of capital, and that the abundance of mere money does not fix the value of capital, or rates of interest, is evident from facts. In California, which exports a million or two of gold every month, rates of interest are higher probably than in any State in the Union. It is because there is little capital there, and a great opportunity to employ it profitably, and consequently, a great demand for it.

Mr. Bowen says: “In 1847 there was a monetary crisis in England, which, with one exception, that of 1825, was severer than any that had been experienced since the commencement of the century. There were two periods of stricture or panic in the course of the year, the one occurring towards the end of April, and the other in October, the intervening period being one of comparative quiescence.” * * *

“Yet it is a curious fact, that the average amount of the notes of the Bank of England, and of all the banks of issue in the United Kingdom, in the hands of the public, was greater during the stricture than in the intervening period; and was very nearly equal to the average of the circulation in the years 1845 and 1846, when the speculation in railroad stock, which was one of the chief causes of the crisis, was at its height.”

“The experience of the United States agrees perfectly with that of England, in proving that the circulation of bank notes

* Bowen, Pol. Econ., p. 338.

is not perceptibly expanded in periods when commerce is brisk, speculation rife, and the rates of interest low,—in one word, when it is usually said, “*money* is plenty;” and that it is not restricted, but usually somewhat increased, when a crisis ensues, and the rates of interest are raised to the highest point, and when, on account of the great difficulty of meeting pecuniary engagements, bankruptcy is frequent. It will be generally admitted, that 1853 was a year of the former character, being a period of advancing prices, few failures, general speculation in railroad stocks and other securities, and having all the usual signs of commercial prosperity.

The aggregate circulation of all the Massachusetts banks in September, of this year, was about \$21,200,000. The following year, 1854, was of the opposite character, being a time of great financial distress, which steadily increased, till, in December, it amounted to a panic. Now the total circulation of the Boston and the country banks in this unlucky year, never fell below twenty-three millions of dollars; in July it amounted to twenty-five millions, and early in December, when the crisis was at its height, it was twenty-four and one-third millions. A period of quiescence began in the spring of 1855, and continued nearly to the close of the year; speculation was repressed, but the rates of interest were low, and it was easy to obtain loans. Yet in April of this year, the circulation had fallen off to about twenty-one and one-half millions, and early in September it was less than twenty-three millions.” *

With a true view of circulating capital, which is the capital that is constantly being lent and borrowed, we may say, without figure of speech, that a bank, with a capital of a million of dollars, is not a collection of dollars, but of houses, lands, goods, merchandise, and the thousand articles of necessity, use, and comfort, that constitute capital. One shareholder has exchanged lands for gold, another his mill, and yet another, his merchandise; and they have placed all this gold together as capital of a bank. The moment the bank commenced business, A, B and C borrowed this gold, and exchanged it for the same lands, mills or merchandise, and now these borrowers are em-

* Bowen, Pol. Econ., pp. 444, 445, 446.

ploying the same capital, the shareholders sought to put to use through the medium of the instrumentality, called a bank.

The capitalist has, in a way easy and convenient to himself, found a hirer of his capital, and the laborer, capital to aid him in his labor. Money again, was the mere instrument,—the vehicle, by which the capital was carried through the bank, to the borrower. The Bank Returns of this State for 1856, show that the one hundred and seventy-two banks in the Commonwealth with a capital paid in of \$58,598,800, and with loans and discounts up to \$101,132,792.15, had in hand in actual money the comparatively small sum of \$4,555,571.41. We may, therefore, well say, that—

“A capitalist's property, though it may exist under his own eye, only in the shape of notes, bank bills, stocks, and other representatives of wealth, does not actually consist in them, but in merchandise, or articles of material wealth, which, in many cases, he has never seen; and these are what he lends upon interest.”*

With a correct notion of the relation that money,—a comparatively small but useful part of capital, sustains to other capital, and labor, we are prepared to proceed to the next consideration.

It is now universally conceded, that if A lends B a farm,—a mill,—a ship,—they may agree upon such rent as they please, or in the absence of agreement, B pays such sum as is reasonable. The same is true of every species of goods, estate, or merchandise, *except* money.

We have seen that money is but one kind of capital,—that a vast majority of all the loans bearing interest, and made by the aid of, or nominally, *as* money loans, are actually loans of capital, other than money; and that in pure money loans, the money is but the mere form and appearance, and not in fact the thing actually sought, and really lent. Why then should the law, even in the case of the pure money loan, attempt to limit the price of the use?—and that against the wishes of both parties to the contract? Why allow a man to rent his house at 8 per cent., his mill at 10, his ship at 20; to sell his merchandise so that his capital in that form shall be worth 50 per cent.

* Bowen, Pol. Econ., p. 338.

per annum, and yet say his gold shall not be rented for more than 6, nor shall his house, mill, or ship, if he exchanges them first for gold, and then lends them in that form? It would be a question of little importance, if the laws answered their intentions, by only effecting the price of capital in gold. They effect vastly more ;—they affect all capital that is borrowed and lent through, or measured in value by the agency of gold or money. There is, in this Commonwealth, probably three hundred millions of dollars of paper bearing interest, and representing capital on interest at this moment, and within the purview of these laws ; while, in the creation of all that debt, not ten millions of money has been actually used. Therefore, it follows, that there are two hundred and ninety millions which are on interest, and where interest is being paid, not for money, but for some other kind of capital. So that, if the whole ten millions of money had been actually lent out, it would constitute the consideration, of but a fraction of the paper paying interest. But this money is not so lent out. At least, one-half of it, is lying idle in the vaults of the banks, and the balance is passing rapidly from hand to hand, resting nowhere. Therefore, substantially all the debts in this Commonwealth, are for loans of this great mass of saved products, or capital, in the various material forms in which we have already referred to it. If this capital were lent in its specific forms, no one would contend for any limitation upon the amount to be received for its use, but all would agree to leave that matter to the laws and circumstances that regulate prices. Why should a different rule apply, when the same thing is really done, except in a more convenient way? You may sell wheat at such price as you agree upon, but if you change it into the form of flour,—a form more convenient to both parties,—then you shall receive but so much for it. If you lend wheat, and deliver it out of your own granary, you may agree upon the price ; but if you lend wheat, by giving the borrower an order to go and get it from your neighbor's granary, across the street, you having paid your neighbor for it, then you shall sell it for only so much ; perhaps at two-thirds what the purchaser would be glad to give you for it, and be the obliged party to get it at that price. This is precisely the usury law. You may rent a farm to A worth one thousand dollars, for five hundred dollars a year, and the law

will compel him to pay it, if he agrees to ; but if you lend him one thousand dollars, to give for that very same farm, and he agrees to pay you for it one hundred per annum,—one-fifth what the law would have held just, under the circumstances before stated,—then the law will not only refuse to compel him to pay the one hundred, but if he has in fact paid it, will compel you to repay him the whole one hundred, and twenty dollars more, for taking what he was once willing and glad to pay. This is a vast distinction without much difference, and clearly shows, that however usury laws are now attempted to be justified, they did not originate in the justice of the matter. A rule, or law, once established,—a thousand reasons will be found for it, which were never thought of in its establishment. It is not impossible, that a law, with no good reason at all for its establishment, will have operated well in some cases. A law that a man should never be compelled to pay more than any thing was worth, and if he did, that he might recover back three times the excess paid above the value, might sometimes work well ; although it has not generally been supposed to be the duty of government, to take very much oversight of the private contracts of its citizens.

It is evident, that the value of capital, as one of the means of new production, depending as it does, like all other values, upon the law of demand and supply, will vary at different times, and in different places. In treating of this subject, we speak always of the average value of capital loaned on good security, or bankable paper. There are three elements, which compose, or fix the rate or value of capital lent. 1st. The earnings of the capital itself. 2d. The trouble or labor of the owner of it, in lending and receiving. 3d. The risk the owner runs of losing this capital. This third element is a very fluctuating one, depending both upon the ability and the disposition of the borrower to repay. These are, again, dependant on the risks and hazards of the business, in which it is purposed to embark this capital, the personal character of the borrower, and the laws for the collection of debts. This risk of losing may vary, as is apparent, from a moral certainty of the loss of all the capital, to a moral certainty of losing none of it ; and consequently would vary the rate from the value of capital, as determined by the two other elements, up to any rate supposable.

No principle or rule can be laid down, as to the rates in cases, where this third element is at all a prominent consideration. It would be as sensible, to ask, what rent one should demand for the use of a house, of a tenant, who was morally sure to set it on fire, the moment he was in it; or to endeavor to argue about the value of rents, from the price you would demand of a man for the privilege of establishing a powder manufactory in a part of your dwelling-house. All hazardous loans, therefore, are to be laid out of this discussion. The question is only of those on good security. The vast majority of loans are on good security. Of all the debts created, in the course of all the business of the world, the portion not paid, as compared with the whole, is a mere bagatelle.

That loans, in which the security is satisfactory, command different rates at different times and places, is apparent enough, as a matter of fact. The reason is not obscure. England has probably the largest saved or surplus capital, of any civilized nation. To England, then, we look for low rates of interest, unless the demand is correspondingly large. The demand is large; for she is the workshop of the world, and to a great extent, its common carrier. She calls into constant use a vast amount of capital, and therefore, rates of interest, although sometimes as low as $2\frac{1}{2}$ per cent., have generally, for a century and a half, been as high as 5 per cent. Holland, with less capital in proportion, perhaps, but still with a large amount, has had lower rates, although she has had no laws limiting the rate of interest. The reason has been, that her people have lacked the enterprise and activity of the English, and consequently, the demand has not been equal to the supply. In the United States, the rates have been, and are, universally higher than in either England or Holland, because enterprise and labor demand a greater amount than the supply found here. It is always true, that in a new country rates of interest are high. The rich seldom emigrate thither. The emigrants are generally from the poorer, or middling class, (as it is sometimes called,)—men who have labor and enterprise, and require capital to work with. There is a call for capital, to pay for the lands; to make the first necessary beginnings and improvements; to furnish seeds, stock and tools, to enable the laborer to obtain a harvest. In a new country this call is almost universal. It

is not money that is desired, but land, lumber, agricultural stock and implements; capital, in other words, in such forms as will aid in new production. These are obtained in exchange for money, which is the thing apparently, but not really borrowed.

Here the demand is greater than the supply. As capital more and more accumulates, and the supply approximates the demand, the rates will fall till our condition is that of the old countries, in this respect. In this extended country, rates differ in different portions of it, being higher in the newer, and lower in the older. The rate depends upon how much, capital judiciously employed, will yield. If it will yield, over and above a fair compensation for the expense of its employment, 10 per cent., it will be in demand at 10 per cent. The laborer does not willingly consent to sell his labor for less than its worth. The owner of capital, in whatever form, is not disposed to sell or loan this, for less than its worth. All that can be said is, that the rate of interest, or the value of capital, is fixed by the same law of demand and supply that regulates other prices, and must therefore vary in different countries, and in different periods, and perhaps places, in the same country.

This is so generally allowed, that no nation has ever attempted, to our knowledge, to absolutely fix the rate of interest. That is, to say that every lender should receive, and every borrower pay, any particular rate. The extent has been to fix a maximum, and say the lender should not receive more than this, but the borrower might get it as much less as he could. If this maximum is placed at the top of the real value of capital, it is of no particular harm, as it does not then practically interfere, either way, whether it be theoretically right or wrong.

Among the results of fixing, or adhering to a rate of interest below the current value of capital, may be named these:—

1st. To one portion of the community the law is a dead letter.

2d. By another portion it is evaded.

3d. It operates to prevent another portion, and that a portion most needing the protection of the law, from realizing a fair value for their capital loaned, while it creates, in favor of others, a monopoly.

1st. To one portion of the community the law is a dead letter.

This is practically found to be so. The mistake is often

made, of supposing that in a loan at rates above the legal limit, the favor is to the lender, in all cases. A and B are neighboring merchants; A has one thousand barrels of flour on hand, on a falling market, and has a note to pay. He knows that to hold that flour thirty days, is worth five hundred dollars to him. He asks B to lend him five thousand dollars for that period, and he offers to pay 12 per cent. per annum,—that is, twenty-five dollars in addition to the legal rate. B says no, that is contrary to law. A, in half an hour, returns to the same man, and says, I will sell you one thousand barrels of flour, at \$4.87½, cash. The market value is \$5. B purchases at once, and A has paid, in a perfectly legal way, \$125 for what he could have had for \$25, but for the law. It needs no very vivid imagination, to conceive of the infinite number of cases where parties are enabled to hold property, or make additional adventures, or enter into larger undertakings, by borrowing capital; and therefore, are as willing to pay beyond legal rates, as the holders of capital are to make such loans,—that is, of course, when the legal rates are below the real value of capital. This is abundantly established by the fact, that while it is notorious that rates of interest in the commercial cities of this State have been above the legal limit for years, it is a rare thing, compared with all the notes given and paid subject to this objection, that it is taken. Indeed, so much is this the case, that a merchant having borrowed at such a rate, and declining to pay a note on that account, would lose standing by such an act, with his associates. In all such cases, the law is a dead letter.

Franklin, in an article printed in 1729, says: “It is impossible, by any laws, to restrain men from giving and receiving exorbitant interest, where money is suitably scarce. For he that wants money will find out ways to give 10 per cent., when he cannot have it for less, although the law forbids to take more than 6 per cent.” *

The difficulty of such a law is, that in nine cases in ten, the limitation is equally against the wishes of borrower and lender. Capital can not be controlled by arbitrary laws. When it will not bring an interest equal to its value, it will at once change into some property investment, that will yield income. Capital

is not independent of labor. Skill of head or hand is inefficient and powerless, without capital; and capital, without the aid of industry and skill, is generally useless. Each is a necessity to the other, and the combination of the two is a necessity to the public welfare. Attempts to adjust for them by law, their mutual relations and interests, will generally prove ineffectual; and the experience of this kind of legislation will be likely to remain what it was in the early attempts of the English government to prevent the taking of any remuneration for the use of capital. The statute, 37 Henry VIII., chap. 7, (1546,) recites that the statutes prohibiting interest altogether have so little force, "that little or no punishment hath ensued to the offenders." Similar enactments, in this age of the world, when the important relations of capital to industry are better understood, will probably continue to have as little force.

In the second place, such laws limiting rates of interest, are constantly evaded. If a man may morally receive any interest for the use of his capital, he may receive what it is fairly worth, in the absence of any civil law upon the subject. If there be wrong in this Commonwealth in taking more than 6 per cent., it is because the civil law forbids it; but, if it can be taken in such way as not to be an infringement of the civil law, then it follows, that it is right, if no more be taken than the capital be fairly worth.

Now a banker has funds to loan. A offers his note, payable in Boston, which can pay by law but 6 per cent. B offers his note, payable in New York; both are equally good; but B says, as you will have trouble in sending my note to New York, I offer you 1 or $1\frac{1}{2}$ per cent. exchange. This is far above the cost of sending it there, and amounts practically to offering the banker 9 per cent. Of course B gets the money. Perhaps B, instead of his own note, offers to sell the banker C.'s note, at 9 per cent. discount. This is not usury.

Another man goes to his bank, and says, I wish a line of discount, equal to \$10,000, and if you will grant this, I will keep a deposit in your bank, equal to \$5,000. Now, as the deposit draws no interest, it is obvious, the value of this operation, to the bank, is 9 per cent. That capital is worth in Boston more than 6 per cent., must be apparent from the bank returns for

the year 1856. The dividends of Boston banks were an average of $7\frac{4.5}{100}$, and varying from say 6 to 10 per cent. Take the average, $7\frac{4.5}{100}$, and add 1 per cent., paid as tax to the State, and 1 per cent. for expense of management, &c., and the gross receipts to the banks were, on the average, $9\frac{4.5}{100}$ per cent. The circulation and deposits will hardly account for all the milk in this cocoa-nut. It does not necessarily follow that any part of this profit was an illegal one.

In the third place, a large class are, by a limitation of interest below the real value, prevented from deriving a revenue from their property equal to its value. Trustees and guardians do not usually, and cannot properly, invest in that class of securities which command the full value of money;—they are not always merchants, and rarely bankers. They therefore lend the funds held in fiduciary capacities, at 6 per cent. Perhaps they lend their own capital at the same time at from 6 to 10 per cent. The temptation, at least, is, themselves to borrow, directly or indirectly, these trust funds at 6, and lend them again at higher rates. There is now a large amount of property held by married women, and which, under the policy of our present legislation, will be rapidly augmented. There is also much property held by public bodies. None of these classes can fairly enter into competition as lenders, by reason of such limitation. There is a large class of lenders, having not great means, who are not possessed of the knowledge requisite to dealing in commercial paper. The very large amount of capital in the aggregate, held by this class, in no way comes into competition with the large bankers and capitalists, and leaves the already rich to reap larger harvests. In other words, the operation of a legal limit, set below the real value of capital, is to prevent free competition, to exclude a large amount of capital from participation in the benefit of this increased value, and thus to create a monopoly in favor of the large capital-holders, and at the expense of the middling and smaller capitalists. The large capitalist devotes himself to ascertaining and availing of the opportunities of the market, which the lesser capitalist cannot afford to do. It may be added, that just so far as competition is suppressed, just so far the borrower is prejudiced as against the lender.

It is certainly desirable that laws, in order to have the general respect of the governed, should correspond to the fact. To have a law upon the statute book, with the full knowledge and general understanding, that it is to be disregarded constantly,—that it is a shadow, and not a fact,—tends to weaken the general strength of all law. It is an evil, to have a law in letter, and which is, in fact, evaded constantly, and understood so to be; or in other words, a law for the frank and ingenuous, but which is no law for the sagacious and knowing. It is an evil and a wrong, to so frame laws that that part of the community who most need legal favor, should be thereby excluded from a benefit of their property, equal to the general benefit derived from property. It is an evil, to so create or maintain laws, as to give the already rich, monopolies. It is as wrong, to deprive capital of such revenue as it fairly earns, as to deprive labor of such reward as it fairly earns. There may be cases where it would be as cruel. A man leaves to his family of young children, \$1,000. They, the owners of this money, have so much capital to loan. It is their only dependance for the necessities of life. Another has no capital to lend, but has his labor to sell. In such a case, it would be as cruel,—would it not be more so?—to say, those children shall receive but half what that capital is worth, as to say that man shall labor for one-half of fair wages.

That the present limit, fixed by the laws of this State, is below the actual and fair value of capital in the great centre of the business of the State, cannot admit of a doubt.

The Committee were informed, that for ten years the average value of capital loaned in Boston, has been 9 per cent. It is sufficient, on this point, to refer to the monetary articles, now a leading feature in all the principal papers of commercial cities. In all these, and even in the commercial articles now generally found in the weekly religious newspapers, will be found given the current rates of the money market. It will be found that the quotations are, and have been for years, above the legal limit,—running up to 8, 10, 12, and even higher rates, at different periods. It is said that a single private banking-house in this city has, during the past year, turned over a sum equal to several millions of dollars, and it is believed, almost entirely at rates above 6 per cent. It is well known, that the large corporations, both railroad and manufacturing, have been,

and doubtless now are, paying rates above the legal rate. When it is added, that no more secure and safe notes can be given, than are given by some of these manufacturing corporations, it is certain enough that money is worth what they will pay for it, managed, as they are, by some of the most intelligent and sagacious of our citizens.

That circulating capital has in late years increased in value, is not remarkable, but seems a natural result of obvious causes. The business world, like a young man starting in business, is tempted to operations beyond the real ability of its present capital. In this impatient age, neither men, nor communities, nor governments, are willing to wait till they have the ready means to accomplish favorite enterprises. The preference is, to anticipate, and trusting to credit, the reliance is, that a great work, so completed, will itself then earn the capital required for its own construction. Within not a long period, business has received many new impulses from scientific discovery. We live in the age that has practically developed and applied the power of steam,—that has devised and developed vast branches of manufacturing industry,—that is witnessing an unexampled exodus from the old world, and the older parts of the new, into the extended area of the West and North-west. The hunting-grounds of the Indian, are being, as by magic, transformed into states and nations. Industrial enterprise is almost everywhere the rule. All this is involving an immense outlay of capital. Observe a single interest:—

“According to Mr. Porter, (*Progress of the Nation*, p. 330,) up to the end of 1849 there had been constructed in Great Britain and Ireland, 5,996 miles of railway, representing a capital of £197,500,000. Over 14,000 miles of railway have been completed in the United States; and if those be added which are in process of construction, the sum will be 17,146. Taking the average cost of construction and equipment at \$25,000 per mile, which is a very low estimate, the capital vested in these American roads, will be \$428,750,000. The capital of the British railways, reckoned in our currency, being about \$975,000,000, we have a grand total of \$1,403,750,000, as the sum which the English and American people have converted into this one form of fixed capital during the last thirty years.

What effect would have been produced on the rate of profit, if this immense sum had remained in the form of circulating capital, seeking investment?"*

At the same time that this immense amount has changed from a circulating into a fixed capital, almost every mile of railroad opened, opened a new place, with new wants, by affording means of easy communication, and stimulated almost every branch of industry,—thus, at the same time, diminishing the supply, and increasing the demand. The wonder is, that the value of circulating capital has not risen to a higher point. But business has its own system of checks and balances, more perfect than any that legislation could devise. Whenever the rate of interest on capital rises to a point so high that business cannot be done upon it, and leave a sufficient compensation for labor and risk, that business will be abandoned or curtailed till a less demand brings down the value of capital again to a point at which business will again pay. If flour is high, more lands are sowed with wheat, till the supply reduces the price to such a rate that some other production is more profitable. Laws can no more regulate trade, than the tide; both are governed by natural laws.

The reasons urged in favor of usury laws, at the present time, are generally based upon erroneous notions of money, and its relations to other capital. It is said that money is essentially different from every other form of capital or thing, and that it is *money* which is lent, and for which interest is paid. We have endeavored to show that money is but one of the various inventions of man; a product created to serve a specific use; as much so as any other instrument; is valuable as such; and that it is only the means of effecting or measuring loans, and not the substantial thing loaned, or for which interest is paid. If this is so, then much of the argument in favor of usury laws falls. Other arguments in favor of usury laws are more ill founded.

It is said, "money at interest never rests, it works nights and Sundays." So grass grows nights and Sundays, showers fall, all the products of the vegetable kingdom mature, ships sail, cattle fatten, cotton and wool grow, mineral products increase,—

*Bowen, Pol. Econ., p. 275.

in fine, nature, in all her vast domain, rests not day nor night, knows no Sabbath, or knows but an eternal Sabbath.

It is again said, that “money is not originally the product of individual labor or skill, but is brought into existence by the government, * * for the public good, as a currency to which all men might have access,” and which “is sent out as an instrument to represent the value of all other articles.” *

These views are very superficial. If government creates money merely as a currency, to which all men may resort, and as an instrument to represent value, what right has any man to assume as his, any part of this currency, and demand any interest at all for it. He pays the government none for it. But, it is not true, that money is brought into existence by the government, and is not a product of individual labor and skill. The government does not undertake at all to *create*, but only to *regulate* the currency; to give it uniformity in form and value. There would be a currency, if government did or said nothing about it, but an irregular one. Government, therefore, to insure a regular and even currency, fixes the alloy, or establishes by law the purity of the metal for a given value; and itself undertakes,—to some extent at the public expense,—the labor of coinage. A miner in California accumulates one thousand dollars worth of gold dust. It is his product. He goes to the United States mint, just as a farmer carries his wheat to mill, and the government melts the dust into dollars, and puts its seal upon them as evidence that they are each worth a dollar; and for this service makes the miner a charge of part of the expense of doing so. Has this gold ceased to be the miner's product? Is the meal the product of the farm or of the mill?

The same writer says, speaking of products of individual labor or skill, as wheat, ships, cloths, “The original, or any subsequent owner may destroy them if he pleases, and neither the public nor any other individual has a right to complain. So absolute is his right, that even the government cannot take it from him for public use, without making an adequate compensation.” †

Without fully assenting to the first of these statements, apply

* Banker's Magazine, Vol. iv. pp. 688, 689.

† Banker's Magazine, Vol. iv. p. 688.

them to money. The miner, the moment he receives his money from the mint, has just as perfect a right to throw it into the sea, as his wheat; a perfect right to melt the dollars into spoons, or any thing else. No one will contend that government cannot take wheat for public use, without compensating the owner, but may take money without compensation. The truth is too clear for argument. All the government assumes to do, is to say what shall constitute money, and when any one is legally possessed of that which the government says shall be money, it is as absolutely his, as his lands. Indeed, since land itself is property, only by force of law, it would be just as true to say, that inasmuch as land is created property by virtue of government declaring it to be such, that therefore, government has a property in it, as to say that because, by virtue of law, gold and silver are constituted money, therefore government has a property in these, underlying all rights of the owners of them.

“Money is indebted for its currency, not to the authority of the government, but to its being a commodity bearing a peculiar and intrinsic value.” *

It is because gold and silver have a peculiar and intrinsic value, and have had, from earliest times, that government has but made law, what the common consent of mankind had before ordained; that is, that gold and silver should perform the function of money. The same law, in the same manner, following and enacting the general consent of mankind, ordains an individual property in the soil of the earth, and its productions.

That gold and silver rest upon their intrinsic value for their currency, and not upon any governmental life bestowed on them, is evident, from the frequent and utter failures of government to create money out of other things,—generally, its own promises. All the power of our government, and all the patriotism of the people, could not save the continental currency from almost utter depreciation. Government can no more create money, than it can wheat.

That government promises, or bank promises to pay money, or bills of exchange, or all, or any of them, can in times of

prosperity and confidence, be made to eke out a currency, is a discovery, or an invention. It is a question of the currency, however, and not of the value of capital to be loaned.

It is objected, that to repeal the usury laws is an experiment. Every change of law is an experiment. But in this matter, we have a notable example. This subject was agitated in England, the leading commercial nation of the world, forty years ago, and resulted after the consideration and deliberation, peculiar to that nation, in 1839, in a change in her laws; she thus leads the way in this, as in some other important matters of legislation. Laws seldom make usages and customs, but usages, customs, and necessities of trade, frequently make laws. In this matter, at first, law forbade any interest, but commerce compelled a recognition of the value of capital, even, it would seem, against the consciences of some of the legislators. In and before 1839, trade and commerce demanded a change in the law in England, and obtained it. It is believed that a demand is now existing, at least in the commercial centres of this Commonwealth, for a modification of our law upon this subject. Allusion has already been made to that demand.

It is said, as another argument in favor of the usury laws, that the borrower and lender do not meet on equal terms. This is true, and it is not true. That a man is generally more independent, who has capital, than one who has not, is true,—as a man with two legs is better off than a man with one. Capital has a value, and that is the reason it is striven for, and that interest is paid at all for it. If the borrower has no capital, the parties may not be said to meet on equal terms in every respect, but equal entirely, in a business point of view; and that is the light in which we are now regarding them. We are not considering how far a man of capital ought to share the benefit of that capital with the poor, but in case, where capital and labor associate in any undertaking, what share of the result shall go to each? In a great majority of the cases of loans, the party borrowing, is as able or well off, as the party lending. Take the loans of banks. The capital loaned is to a great extent the property of savings institutions,—the small savings of the poor; more than thirty millions of such savings are now on loan in this Commonwealth. The stock or capital of the other banks, is largely held in small amounts, by people in moderate circum-

stances,—by trustees, guardians and women. The borrowers from these banks are the active, able, business community, borrowing, if they can, money at six, that will yield them in their business, returns of perhaps three or four times that amount. Here, the lender, manifestly, has no advantage.

Take the common case of lending. A has capital to lend ; he wishes to lend it to make it productive. It is worth nothing unless he does lend it. He wishes to get as much income from it as he can, rightly. That is true of all who have to sell or lend. B wishes to borrow this capital, to trade or operate on. He calculates to pay out of the results, of his trade or operations, the interest, and reserve the balance for his profit. The less interest he pays, the more profit remains. He wishes to get this capital as low as he can, rightly. That is true of all who buy or borrow. A may lend to any who will borrow,—and B can borrow of any who will lend. The competition is open and free to each. It is extremely difficult to see any unequal terms here.

If it be said that the borrower may be poor and distressed,—the answer then is, that class of borrowing is a matter of charity rather than business. No one will contend that all loans between business men, are to be reduced to the rate that ought to be charged on a loan made chiefly to alleviate want and distress ;—or that capital shall receive no more compensation than the poor and distressed can pay for it. That might be nothing. As well, and better, say by law, that the agriculturists shall not charge more for bread stuffs than the poor can pay. The same great law of supply and demand fixes the price of bread and the price of capital.

The object of removing restrictions upon the lending of capital, are frequently misunderstood, and misstated. Money, or capital, is not made or unmade by such laws ;—but the circulation of it, may be made by them, easy, free and equable, or cramped and hampered. They may give one class of capitalists the opportunity to inflate rates for their own benefit,—enable one class to realize more than a fair value for their capital, and compel another class more deserving legislative protection, to take less than their's is really worth. The rate of dividend of savings banks last year is given at $\$4\frac{19}{100}$, which is less than one half the actual value of money in Boston during that period. If it be said, that the fifth year dividend brings up this amount,

it is to be considered, how much of that fifth year dividend is made up of the losses of interest by depositors for short periods, who have received only the lesser annual dividend, or no dividend at all; and so, how far depositors for short periods, are made to contribute to the benefit of the more favored and fortunate depositors for longer periods. It may be added, that as the rate of interest is higher in New York, and other States, the temptation to capital is to flow there for investment. Capital lost to Massachusetts, is like any other producer, lost to her. The limitation of interest, has, doubtless, had more or less effect, in inducing the unfortunate investments in railway and other securities, which have been made and have involved loss to those not able to bear it, and at the same time, encouraged the undertaking of ill advised projects, which, swallowing up a large aggregate of capital, without prospect of return, have proved a positive detriment to the community. These are practical considerations, but the question is one that ought mainly to be determined by the question whether restriction upon the use of capital is *right and just* in itself. A rule may sometimes be right, that is not expedient, but, a rule cannot be expedient, that is not right. If the restriction upon capital, as to the rate of income it shall receive, when loaned, is right, the law should hold the public to the observance of such restriction; but if such restriction is not right, then the repeal of the law imposing it, is both right and expedient.

The conclusions of the committee are, that the laws limiting the rates of interest, are not founded upon any just principle, and must in time yield, at any rate, in all cases where the legal limit is above the average value of capital. There is no serious objection to laws limiting interest to rates somewhat above the real value of capital; for in that case, they would not effect the vast majority of capital loaned; and would meet the objections of some, who contend for and desire to maintain these laws. They would prevent the legal enforcement of bargains for extreme rates. In principle, the Committee see no reason why capital, in all forms, should not be left equally free to trade and competition. There are no limits by law upon the prices to be demanded for food, fuel, or houses,—the absolute necessities of life,—and there can be no reason why capital, in less needed forms, should be restricted. That these restrictions tend to

defeat their own ends, to some extent, and to raise instead of lowering rates, cannot be doubted. The lender at rates above the legal limit, will take in, as one element, tending to enhance his price, the fact of his liabilities to the legal penalties in such cases.

However, as these laws have been long established in this Commonwealth, and many contracts have been made, under them, and are overdue, and yet uncanceled, and as out of the commercial centres of the Commonwealth, the legal limit may possibly be as high, on the average, as the value of capital there seeking investment, the Committee do not recommend, at this time, legislation to the extent of an entire repeal of the usury laws; but are disposed to adopt the conclusion of Lord Bacon, before referred to, and recommend,—that there be established “two several sorts” of interest, or, that while parties making permanent investment, as on mortgages, and the like, for considerable periods of time, may be left for the present, under the laws as they now stand, a law should be established, allowing the parties to commercial or short paper, the privilege of entering into such contracts as to the rate of interest on such paper, as they may agree upon in writing, not exceeding twelve per cent. per annum.

In accordance with this recommendation, your Committee report the accompanying Bill.

THOMAS H. RUSSELL, *Chairman.*

The first of these is the fact that the
the second is the fact that the
the third is the fact that the

the fourth is the fact that the
the fifth is the fact that the
the sixth is the fact that the
the seventh is the fact that the
the eighth is the fact that the
the ninth is the fact that the
the tenth is the fact that the

Table

The first of these is the fact that the
the second is the fact that the
the third is the fact that the
the fourth is the fact that the
the fifth is the fact that the
the sixth is the fact that the
the seventh is the fact that the
the eighth is the fact that the
the ninth is the fact that the
the tenth is the fact that the

The first of these is the fact that the
the second is the fact that the
the third is the fact that the
the fourth is the fact that the
the fifth is the fact that the
the sixth is the fact that the
the seventh is the fact that the
the eighth is the fact that the
the ninth is the fact that the
the tenth is the fact that the

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty-
Seven.

AN ACT

In relation to the Interest of Money.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :—

1 The laws of this Commonwealth relating to the
2 interest of money, are hereby so far amended, that
3 such rate of interest, not exceeding twelve per centum
4 per annum, may be reserved or taken, upon any note,
5 draft, acceptance, or bill of exchange, having not
6 more than twelve months to run, as the parties
7 thereto may agree upon in writing.

